

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 6970

BILL NUMBER: SB 470

DATE PREPARED: Jan 2, 2002

BILL AMENDED:

SUBJECT: Tobacco Retailers.

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FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State

Summary of Legislation: This bill requires a person who sells or distributes a tobacco product to the public to register with the Alcohol and Tobacco Commission. The bill provides the Commission with the same powers over tobacco products that the Commission has over alcohol and alcoholic beverages. The bill creates the Youth Antismoking Education Fund that is funded by tobacco products retailer's registrations.

The bill requires the State Department of Health to administer the fund. The bill repeals obsolete language.

Effective Date: July 1, 2002.

Explanation of State Expenditures: *Alcohol and Tobacco Commission:* This provision requires the Alcohol and Tobacco Beverage Commission (ATC) to issue permits to individuals who do the following: (a) sell tobacco products at retail, (b) sell a tobacco product from a vending machine, or (c) distribute a tobacco product to the public without charge. Sellers of tobacco products would have to be registered as of January 1, 2003.

Based on U.S. Census *1997 Economic Census* data it estimated that tobacco products are sold at a minimum of 17,500 locations statewide. This estimate includes stores, hotels, restaurants, and bars. It does not include vending machines placed in locations other than within these types of establishments.

It is expected that the ATC would need to hire additional staff to process the registrations of the tobacco retailers. The ATC currently employs nine alcoholic beverage permit processors, five for retailer and dealer permits, three to process employee permits, and one to process other types of permits. The ATC estimates that it processes approximately 10,000 retailer and dealer permits and 45,000 employee permits each year.

The bill grants excise police officers full police powers and duties to enforce any law of this state relating to tobacco products. It also gives the ATC the power to examine, inspect, and search licensed premises where

tobacco products are kept. While a percentage of the licensed premises will be establishments that are currently licensed to sell alcoholic beverages (for example certain drug and grocery stores, bars and restaurants), it is expected that a number of the establishments that are licensed to sell tobacco will not also sell alcohol (for example discount cigarette stores, gas stations, concession stands). Based on Census and ATC data, it is estimated that the bill would require the ATC to inspect an additional 7,500 locations.

The bill could require the ATC to hire more excise offices. If additional excise police officers are hired, there would be associated equipment expenses for each officer. Excise police officers are located in six district offices throughout the state.

This provision may also result in an increase in the number of violations cited, which would increase costs associated with court appearances, depositions, and report drafting. However, since the bill requires a person guilty of violating IC 7.1 to pay the damages incurred by the Commission, the expected increase in the Commission prosecutorial costs could be partially mitigated. The ATC currently has one prosecutor to process violations and appeals related to alcoholic beverages.

This bill does not contain an appropriation. The funds and resources required above could be supplied through a variety of sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. The ATC currently has 61 excise officer positions and none are vacant. The ATC also plans to add six new officers near the beginning of 2002. These officers, as well as seven others hired by the ATC during the summer of 2001, are part of a tobacco enforcement program funded by the Tobacco Use Prevention and Cessation Board.

State Department of Health: The State Department of Health (SDOH) could incur additional costs associated with administering the Youth Antismoking Education Fund. However, the bill would allow the Department to use money in the Fund to cover its administrative costs (see *Explanation of State Revenues*, below).

Explanation of State Revenues: Retailers that sell tobacco products would be required to pay an annual fee of \$25 for the tobacco products retailer permit. Permit fee revenue is to be deposited in the Youth Antismoking Education Fund, created by this bill. If 17,500 retailers apply for a permit, fee revenue would be \$437,500 per year.

Money in the fund would be used to prevent Indiana youths to start smoking and to encourage younger smokers to quit. The fund would be administered by the SDOH. In administering the fund, the bill allows the SDOH to participate in programs with other governmental agencies or public or private entities.

Penalty Provision: Placing tobacco retailers under the ATC's regulatory framework could increase the number of court cases brought by the Commission. A violation of IC 7.1 is a Class B misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: *Penalty Provision:* A Class B misdemeanor is punishable by up to 180 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Alcohol and Tobacco Commission; State Department of Health.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Don Okey, Alcoholic Beverage Commission, 232-2463; U.S. Census Bureau, 1997 *Economic Census*.